IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 7747 of 2002

Between:

K.Ramachandra Rao, S/o K.Laxmi Narsimha Rao,

Aged 48 years, Occ: Staff Assistant-cum-Assistant Cashier

(dismissed from service), R/o 1-6-28/6, Chaitanyapuri, Hyderabad.

..... PETITIONER

AND

The Andhra Pradesh State Cooperative Bank Limited,

Rep. Managing Director, Troop Bazar,

Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court in the interest of justice be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari and to call for the records relating to the order of person-in-charge of the Andhra Pradesh State Cooperative Bank in dismissing the petitioner from service as communicated by the Managing Director vide his Proceedings No.VC/DA-5/288, dated
28-02-2002 and as confirmed by the Appellate Authority (in its resolution dated 27-03-2002) communicated vide proceedings No. VC/D-5/325 dated 04.04.2002 of the Managing Director.

Counsel for the Petitioner:MR.P.NAVEEN RAO

Counsel for the Respondent: SMT.BOBBA VIJAYALAKSHMI, Standing Counsel for APCOB.

The Court made the following :

ORDER:

Heard Sri P.Naveen Rao, learned counsel appearing for the petitioner, Smt. Bobba Vijayalakshmi, learned counsel appearing for the respondents.

The petitioner herein, who is working as a Staff Assistant-cum-Assistant Cashier with the respondent Co-operative Society, files this writ petition, *inter alia,* seeking a writ of Certiorari for quashing the proceedings dated 28.02.2002 passed by the Managing Director of the respondent-Bank dismissing him from service and as confirmed in appeal by the appellate authority as per the resolution dated 27.03.2002 as bad and illegal.

The case of the petitioner is that having joined the service in October,1975 as Assistant Cashier, he acquired several promotions in view of his eligibility and services rendered and ultimately he was promoted as a Manager in the year 1982 and at the relevant point of time he was working as a Branch Manager of the respondent-Bank at Taranaka Branch and thereafter he was transferred to the Head Office. However, a charge sheet dated 03.07.1997 was served on the petitioner in respect of certain allegations, covering the period from September 1996 to February 1997 of which the charge included indiscriminate and irregular sanction of consumer durable loans and opening of current accounts in the names of M/s Sri Sai Enterprises and M/s Anjana Electronics which are non-existent. Credit of substantial loan amounts to these firms and drawl of funds. The petitioner had filed a detailed explanation on 21.08.1997 along with the statement of defence denying the entire allegations. It was pointed out by the petitioner that all the advances granted by him were virtually recovered to a great extent except to the extent of small portion and therefore nothing can be attributed against him. He further stated that he had struggled hard to ensure proper remittances in the loan accounts and due to hard work and serious efforts made by him, as many as 301 accounts out of 477 accounts have been successfully closed and substantial amounts have been remitted. In spite of the same, though an Enquiry Officer was appointed, there was no proper enquiry nor any consideration in regard to various aspects as pointed out by him and ultimately a report was submitted on 18.03.1998 finding against the petitioner. Basing on the said report, a show cause notice dated 20.05.2000 was issued to the petitioner calling for his explanation against the proposed punishment. To which, the petitioner had filed explanation on 05.06.2000 in detail and also raising a specific plea that the Enquiry Officer was biased especially in assessing the charges on the evidence and the material on record. Without properly considering the same, the Disciplinary Authority namely the Committee of Person In-charge passed the impugned order dated 28.02.2002 dismissing the petitioner from service. Aggrieved thereby, the petitioner had filed a regular appeal before the General Body on 18.03.2002 raising all the aforesaid and other contentions enclosing several documents in support of his case. However, the said appeal was also dismissed on 27.03.2002 without any proper hearing or considering the relevant material. In view of the same, it is the case of the petitioner that having regard to the fact that he was reverted to the post of Staff Assistant on 07.03.2001 the authority which has passed the dismissal order is not competent and even the appellate authority is also not

empowered to proceed with the matter. Further, it was pointed out that the competent authority as per Regulation No.52 is the Board to impose penalty of dismissal and as per Regulation No.53(iv) General Body of the Bank is the appellate authority. These two Regulations have been violated in the process and ultimately the petitioner was sought to be removed from service. Even the authorities, which have passed the original order of dismissal, has decided the appeal, as such the entire proceedings are totally vitiated. In regard to the merits, the petitioner has explained in detail as to how he should not be blamed against the allegations alleged. Hence, the writ petition.

The learned counsel for the petitioner strenuously contended that apart from the entire enquiry process being initiated and not by competent authority, the authorities have not taken into consideration the report in pursuance of an enquiry conducted under Section 51 of the A.P. Co-operative Societies Act, 1964, vide R.C.No.24861/2002-Z.VI.I., dated 30.09.2003 wherein the petitioner has been totally absolved of any such charges. Therefore, the entire impugned proceedings are totally vitiated.

The learned counsel for the respondents sought to repel the contentions on the ground that the disciplinary enquiry is totally independent and it has come to its own conclusion which is purely that of fact and therefore, no complaint can be made by the petitioner.

Considering these and other submissions from both the sides, the point which arises for consideration is as to whether the impugned action of the respondents in dismissing the petitioner from service as upheld by the appellate authority, is valid ?

There is no dispute to the fact that the petitioner has been in service with the respondents and ultimately, at the relevant point of time, he was working as Branch Manager, on certain allegations, a charge sheet was issued, which is comprehensive enough to raise a point against the petitioner in respect of the loans advanced from the Bank. There can not be any dispute to the fact that the petitioner being the Manager of the respondent-bank is responsible for all such activities or irregularities of the Bank. Though explanation is filed denying the allegations and also pointing out as to the efforts taken by him, however, the fact that the very grant of loans itself was in question before both the authorities where it was held that there is a total indiscrimination, irregular sanction of consumer durable loans and also

opening of account which are non-existing at Taranaka branch. These allegations do constitute prima facie a serious one. Except stating that the petitioner has made efforts to close the account by realizing the amounts, there is no material on the part of the petitioner during the course of enquiry to show as to how such allegations as made against him in respect of such indiscrimination and irregular sanction of the loans. Merely because the petitioner recovers the amounts from the said loanees, that itself does not absolve him from the liability, if any such indiscrimination or irregularity is found. The primary authority and the appellate authority, both having gone in detail in respect of each and every aspect and allegations as found that there is no responsibility in discharging the functions by the petitioner. In view of such findings as arrived at by both the authorities, this Court would not venture to invoke Article 226 of Constitution of India for the purpose of reassessing or re-appreciating the same. Further, no other aspect has been pointed out to show as to how the findings as arrived at by the authorities are perverse. An attempt has been made on the part of the learned counsel for the petitioner that having regard to the enquiry as contemplated under Section 51 of the A.P. Co-operative Societies Act, 1964, absolving the petitioner from any such liabilities or responsibilities, the present proceedings are wholly unsustainable. It is now well settled that the enquiry as contemplated under Section 51 of the said Act, is only an administrative. A report as such is neither conclusive nor has any binding force either in the eye of law or even on the executive administration. It is only an attempt contemplated statutorily to find out prima facie any irregularity and that itself can not form any basis for any action as ultimately contemplated either under the provisions of the A.P Co-operative Societies Act or otherwise. Therefore, merely because there is any such finding in the report under Section 51 of the Act would not absolve nor any proceedings to be initiated on disciplinary side by the authorities in respect of any such allegations of mis-conduct. At the very these submissions, no other irregularity has been pointed out by the petitioner either in regard to the procedure or even otherwise. In support, the learned counsel for the petitioner also sought to place reliance on the decision of the Supreme Court in ***Kailash Nath Gupta v. Enquiry Officer, (R.K. Rai),Allahabad Bank and Others)*** Whereunder it was held in that case the punishment of removal of services of the Bank Manager as disproportionate to the charge of commission of procedural directed in advancing small loans came to be recovered. On the facts of the case and especially in view of the advancing of small loans, it was held that such punishment is quite higher side. However, in this case,

there is any amount of vastness of funds involved and also in awarding such loans to number of persons, it cannot be said that the punishment of removal is in any way excessive or has no collusion to the gravity of the offence. In these circumstances, it has to be held that the disciplinary action as taken against the petitioner, duly following the procedure on

a properly arrived at finding, is perfectly valid. Hence, I do not find any merits in the Writ Petition and the same is liable to be dismissed.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

07.02.2005

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director,Andhra Pradesh State Cooperative Bank Limited,

Troop Bazar,Hyderabad.

2 Two C.D. copies.